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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

Refer to:  
OSB2000-0311 (COE No. 2000-00950)  
OSB2000-0299 (COE No. OYA-1-008760)

January 9, 2001

Mr. Lawrence C. Evans  
Chief, Regulatory Branch  
Corps of Engineers, Portland District  
ATTN: Judy Linton  
P.O. Box 2946  
Portland, Oregon 97232

Re: Endangered Species Act and Magnuson-Stevens Act Consultation for Corps of  
Engineers' Permit ID Nos. 2000-00950 and OYA-1-008760

Dear Mr. Evans:

This responds to your November 15, 2000, letter to Michael Crouse requesting informal consultation under the Endangered Species Act (ESA) and Magnuson-Stevens Act on the Corps of Engineers' (Corps) issuance of two permits (Nos. 2000-00950 and OYA-1-008760) under Section 404(b)(1) of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The Corps has determined that these activities would not likely adversely affect Lower Columbia River steelhead (*Oncorhynchus mykiss*), Lower Columbia River chinook salmon (*O. tshawytscha*), Upper Willamette River chinook salmon (*O. tshawytscha*), Snake River spring/summer chinook salmon (*O. tshawytscha*), Snake River fall chinook salmon (*O. tshawytscha*), Upper Columbia River spring chinook salmon (*O. tshawytscha*), Snake River steelhead (*O. Mykiss*), Upper Columbia River steelhead (*O. mykiss*), Columbia River chum salmon (*O. keta*), and Upper Willamette River steelhead (*O. mykiss*). Descriptions of the proposed actions are found in Table 1.

This consultation is undertaken pursuant to section 7(a)(2) of the ESA and its implementing regulations, 50 CFR Part 402. In addition, this document also serves as consultation on Essential Fish Habitat (EFH) for coho salmon (*O. kisutch*), chinook salmon and starry flounder (*Platyichthys stellatus*) under the Magnuson-Stevens Act and its implementing regulations (50 CFR Part 600).

The NMFS concurs with the COE's determination that proposed projects are not likely to adversely affect the listed species because: 1) Due to run timing, site conditions, and local abundance, listed species are unlikely to occur in the vicinity during the proposed dredging period; 2) proposed dredging methods will minimize any potential entrainment of listed fish; 3) sediments have been tested and meet guidelines of the Lower Columbia River Dredged Material Evaluation Framework; and 4) return water from the upland sites will meet Oregon Department

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of Environmental Quality standards. Therefore, NMFS believes there is less than a negligible likelihood of incidental take of listed salmonids occurring due to these proposed actions.

Table 1. Proposed actions.

<i>COE #</i>	<i>Stream</i>	<i>Location</i>	<i>Project Description and Minimization Measures</i>
2000-00950	Columbia River	River mile 102.5 at Portland, Oregon	The proposed action involves maintenance dredging at Terminal 6 using a clamshell dredge to a depth of -40 feet. Material will be disposed of at an upland rehandling site. Removal will occur in the approved work window.
OYA-1- 008760	Willamette River	River mile 1st Portland, Oregon	The proposed action involves maintenance dredging at Terminal 5 using a clamshell dredge to a depth of -42 feet. Material will be disposed of at an upland rehandling facility. Removal will occur during the approved work window.

The COE must reinitiate consultation if: (1) New information reveals that effects of the actions may affect listed species in a way not previously considered, (2) the actions are modified in a way that causes an effect on listed species that was not previously considered, or (3) a new species is listed or critical habitat is designated that may be affected by the actions (50 CFR 402.16).

The COE should also be aware that NMFS has concerns about the adequacy of the Lower Columbia River Dredged Material Evaluation Framework in protecting salmonids from exposure to contaminants. As new criteria are developed and established, further testing of sediments in dredging areas may be required and additional restrictions imposed on future and existing permits.

### ESSENTIAL FISH HABITAT CONSULTATION

The Pacific Fisheries Management Council (PFMC) is one of eight regional fishery management councils established under the Magnuson-Stevens Act. PFMC develops and carries out fisheries management plans for salmon, groundfish and coastal pelagic species off the coasts of Washington, Oregon and California, and recommends Pacific halibut harvest regulations to the International Pacific Halibut Commission.

As required by the Magnuson-Stevens Act, PFMC described and identified EFH in each of its fisheries management plans. EFH includes "those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity." The Columbia River estuary and the Pacific Ocean off the mouth of the Columbia River were designated as EFH for groundfish and

coastal pelagic species,<sup>1</sup> and all streams, lakes, ponds, wetlands, and other water bodies currently, or historically accessible to salmon in Washington, Oregon, Idaho, and California are designated as EFH for salmon.<sup>2</sup>

The Magnuson-Stevens Act also established an EFH consultation process. Federal agencies are required to consult with NMFS on all actions that may adversely affect EFH. The NMFS interprets the scope of these consultations to include actions by Federal agencies that occur outside designated EFH, such as upstream or upslope, but which nonetheless may have an adverse effect on habitat conditions necessary for the long-term survival of the species within EFH. The NMFS must provide conservation recommendations for any Federal or State activity that may adversely affect EFH. Within 30 days of receiving EFH conservation recommendations from the NMFS, Federal agencies must conclude EFH consultation by responding to NMFS with a written description of conservation measures the agency will use to avoid, mitigate or offset the impact of its action on EFH. If the Federal agency selects conservation measures which are inconsistent with the conservation recommendations of NMFS, the Federal agency must explain in writing its reasons for not following NMFS' recommendations.

The two proposed projects occur within the area designated as EFH for chinook and coho salmon, and starry flounder. Information submitted by the COE is sufficient to conclude that the effects of this project on EFH are likely to be within the range of effects considered in the Endangered Species Act portion of this consultation. Based on that analysis, the NMFS finds that the proposed project is unlikely to adversely affect EFH for coho salmon, chinook salmon and starry flounder. Because the project is not likely to adversely affect any designated EFH, the NMFS has no conservation recommendations to make at this time.

This concludes EFH consultation for the proposed projects along the Willamette River. The COE must reinitiate this EFH consultation if: 1) New information reveals effects of the agency action that may affect designated EFH in a manner or to an extent not considered in this consultation; 2) the agency action is subsequently modified in a manner that causes an effect to designated EFH not considered in this consultation; or 3) new EFH is designated that may be affected by the action.

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<sup>1</sup> Pacific Fishery Management Council, Final Environmental Assessment/ Regulatory Review for Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (October 1998), and The Coastal Pelagic Species Fishery Management Plan: Amendment 8 (December 1998). See, also, Casillas, *et al.*, Essential Fish Habitat West Coast Groundfish Appendix, National Marine Fisheries Service, 778 p. (1988).

<sup>2</sup> Pacific Fishery Management Council, Amendment 14 to the Pacific Coast Salmon Plan. Appendix A: Description and Identification of Essential Fish Habitat, Adverse Impacts and Recommended Conservation Measures for Salmon (1999).

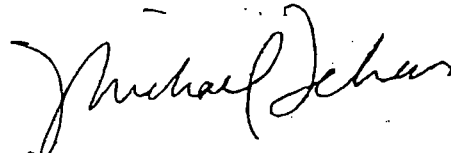
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If you have any questions, please contact Ben Meyer of my staff in the Oregon State Branch Office at 503.230.5425.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael J. Schaefer".

for Donna Darm  
Acting Regional Administrator